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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION
10 DANTAO SU, CASE NO. 5:10-cv-04194 EJD
11 Plaintiff(s), ORDER DISMISSING CASE
12 v.
13 DEFENSE LANGUAGE INSTITUTE
FOREIGN LANGUAGE CENTER, et. al.,
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15 Defendant(s).
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17 On September 20, 2012, the court ordered Plaintiff Dantao Su (“Plaintiff”) to produce to the
18 clerk of the court two Summons forms, one for the United States Attorney for the Northern District
19 of California and one for the United States Attorney General, so that service of process could be
20 accomplished in this action pursuant to Federal Rule of Civil Procedure 4(i). See Docket Item No.
21 42. As noted by the court, Plaintiff has alleged that Defendant’s status as a federal agency forms the
22 basis for federal jurisdiction. Id.; see also Compl., Docket Item No. 1, at ¶ 1. The court further
23 explained that absent such status on the part of Defendant, federal subject matter jurisdiction over
24 Plaintiff’s claims would not arise. Id. The court also admonished Plaintiff that this case would be
25 dismissed if she did not comply with order to produce the Summons forms. Id.

26 As of this date, Plaintiff has not complied as directed. Moreover, Plaintiff’s more recent
27 filings reveal she maintains the position that service on the United States Attorney and Attorney
28 General are unnecessary. However, in light of the jurisdictional quandary identified above as well

1 as the fact that Plaintiff herself has alleged Defendant's status as a federal agency, this court cannot
2 proceed with this matter further under the current circumstances.

3 Accordingly, this case is DISMISSED WITHOUT PREJUDICE pursuant to Federal Rule of
4 Civil Procedure 4(m).¹ The Clerk shall close this file.

5 **IT IS SO ORDERED.**

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7 Dated: October 16, 2012
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EDWARD J. DAVILA
United States District Judge

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28 ¹ Although the court previously indicated it would dismiss this case with prejudice for lack of
prosecution pursuant to Federal Rule of Civil Procedure 41(b), it now finds it more appropriate to
dismiss for lack of service under Rule 4(m).